

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

CAESARS ENTERTAINMENT
OPERATING COMPANY, INC., *et al.*,

Debtors.

Chapter 11

Case No. 15-01145 (ABG)

Jointly Administered

**DECLARATION OF JEFFREY CHUBAK
IN FURTHER SUPPORT OF EARL OF SANDWICH'S
SUMMARY JUDGMENT MOTION**

I submit this reply declaration in further support of Earl of Sandwich (Atlantic City), LLC's summary judgment motion. Attached hereto as Ex. 15 is a true and correct copy of the transcript of the deposition of Peter Lupoff. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 8, 2018

/s/ Jeffrey Chubak

EXHIBIT 15

Lupoff Deposition Transcript

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Chapter 11
)
CAESARS ENTERTAINMENT) Case No. 15-01145
OPERATING COMPANY, INC.,) Jointly
et al.,) Administered
)
Debtors.)

DEPOSITION OF PETER LUPOFF
New York, New York
Tuesday, August 14, 2018

Reported by:
LISA MURACO
JOB NO. 146105

Tuesday, August 14, 2018
10:00 a.m.

Deposition of PETER LUPOFF, held at
the offices of DRINKER BIDDLE & REATH LLP,
1177 Avenue of the Americas, New York, New
York, before LISA M. MURACO, a Notary
Public of the State of New York.

A P P E A R A N C E S:

STORCH AMINI
Attorneys for Debtor
2 Grand Central Tower
140 East 45th Street
New York, New York 10017
BY: JEFFREY CHUBAK, ESQ.

DRINKER BIDDLE & REATH
Attorneys for Peter Lupoff
1177 Avenue of the Americas
New York, New York 10036
BY: CLAY PIERCE, ESQ.

P. Lupoff
P E T E R L U P O F F,
called as a witness, having been duly sworn
by a Notary Public, was examined and
testified as follows:

EXAMINATION BY
MR. CHUBAK:

Q. State your full name for the record,
please.

A. Peter Lupoff.

Q. Good morning.

A. Hi.

Q. Mr. Lupoff, have you ever been
deposed before?

A. Yes.

Q. Can you tell me the matters in which
you've been deposed in.

A. The matter regarding a failed trade
in Westinghouse, where White Box as plaintiff,
Landstar, defendant.

And Fulcrum versus Strategic, which
was a failed trade claim, back in -- I think it
was 2011.

Q. And prior to the Fulcrum litigation,
have you -- had you been deposed in connection

P. Lupoff
or testified in trial in connection with the
failed bankruptcy trade claim?

A. No.

Q. Did you prepare an expert report in
connection with the Fulcrum litigation?

A. I did.

Q. Following the conclusion of this
deposition, can you provide me with a copy of
that report.

MR. PIERCE: We'll take the request
under advisement. I think we're in
communication right now, trying to get a
copy of it.

MR. CHUBAK: Okay.
(Lupoff Exhibit 1, subpoena, marked
for identification.)

MR. PIERCE: So just so you
understand the process, Peter, Mr. Chubak
is going to be marking documents which he's
going to be handing to you. Each of them
will be called an exhibit. He'll ask you
some questions about them. You have a
right to read them before answering
questions. But that's the first exhibit.

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<p>1 P. Lupoff</p> <p>2 THE WITNESS: Okay.</p> <p>3 BY MR. CHUBAK:</p> <p>4 Q. Have you received a copy of this</p> <p>5 document before today?</p> <p>6 A. It may have come as an attachment to</p> <p>7 an e-mail. I don't recall it offhand.</p> <p>8 Q. Do you understand that this document</p> <p>9 commanded you to bring certain documents to</p> <p>10 today's deposition?</p> <p>11 A. I don't understand that. Does that</p> <p>12 -- I can read it now, if you'd like me to.</p> <p>13 Q. Yeah, please.</p> <p>14 (Witness complies.)</p> <p>15 A. This is probably the first time I'm</p> <p>16 reading it, since that's the first time I've</p> <p>17 been aware that there was an obligation for</p> <p>18 today, other than coming.</p> <p>19 Q. Okay. I'm going to refer you to the</p> <p>20 middle of the first page, where there's the</p> <p>21 italicize word "Production."</p> <p>22 It says: "You or your</p> <p>23 representatives must bring with you to the</p> <p>24 deposition the following documents."</p> <p>25 And then it says: "Says see</p>	<p>1 P. Lupoff</p> <p>2 attached schedule."</p> <p>3 A. I see it.</p> <p>4 Q. I'm going to refer you to the last</p> <p>5 page that says "Schedule."</p> <p>6 A. Okay.</p> <p>7 Q. Do you understand that this document</p> <p>8 commanded you to bring the documents identified</p> <p>9 in paragraph 1 through 5?</p> <p>10 A. I understand that now, yes.</p> <p>11 Q. Do you understand -- your counsel,</p> <p>12 prior to the start of this deposition --</p> <p>13 withdrawn.</p> <p>14 Prior to the start of this</p> <p>15 deposition, Mr. Pierce represented that you had</p> <p>16 not brought any documents in connection with --</p> <p>17 withdrawn.</p> <p>18 I'm going to ask you several</p> <p>19 questions about the documents identified in</p> <p>20 this list.</p> <p>21 The first paragraph asked you to</p> <p>22 bring the purchase and sale agreement for the</p> <p>23 last 20 bankruptcy trade claims that you've</p> <p>24 been involved in.</p> <p>25 Can you identify the last 20</p>
Page 8	Page 9
<p>1 P. Lupoff</p> <p>2 bankruptcy trade claims that you've been in</p> <p>3 involved in?</p> <p>4 MR. PIERCE: Object to form.</p> <p>5 You can answer.</p> <p>6 A. I probably couldn't create a</p> <p>7 complete list of 20. I could probably provide</p> <p>8 a list that might have 50 to 100 names on it,</p> <p>9 and contained in that list would be the last</p> <p>10 20.</p> <p>11 Q. Can you tell me the purchasing</p> <p>12 entity in connection with those 50 to 100</p> <p>13 trades?</p> <p>14 MR. PIERCE: Objection to form.</p> <p>15 You can answer.</p> <p>16 A. Not -- I can probably provide a</p> <p>17 number of names where it's possible. I don't</p> <p>18 believe we purchased any trade claims in any of</p> <p>19 our Tiburon entities, although I'm not 100</p> <p>20 percent certain of that. And there were at</p> <p>21 least a dozen entities that possibly could have</p> <p>22 been a counter-party. Although more than</p> <p>23 likely at Tiburon, we used one vehicle for this</p> <p>24 kind of purpose, and I would have imagined</p> <p>25 that's where that would have been done.</p>	<p>1 P. Lupoff</p> <p>2 That's a very quick thing to figure</p> <p>3 out, and also don't believe we brought any in</p> <p>4 the period of time of 2009 and 2017, when I</p> <p>5 operated Tiburon.</p> <p>6 At Millennium, however, I'm fairly</p> <p>7 certain we brought one or two, but only one or</p> <p>8 two. For those, I could probably -- I'm fairly</p> <p>9 certain I know at least one of them.</p> <p>10 And I am unclear if we purchased a</p> <p>11 second one. That I have a name of a second</p> <p>12 one, it's plausible.</p> <p>13 The entity at Millennium could have</p> <p>14 been any number of Millennium entities. And</p> <p>15 since I didn't construct the paperwork for the</p> <p>16 trade and wouldn't have filed transfers, it</p> <p>17 would have been a different department within</p> <p>18 Millennium. Millennium is pretty segmented.</p> <p>19 We need to hear from them, given the</p> <p>20 fact they created separate units or separate</p> <p>21 specialized investment vehicles in order to do</p> <p>22 these kinds of transactions. I would not know</p> <p>23 that.</p> <p>24 I could probably come up with five</p> <p>25 or six various Millennium entities that's</p>

Page 10	Page 11
<p>1 P. Lupoff</p> <p>2 plausible and still potentially get wrong what</p> <p>3 the entity was.</p> <p>4 It's also feasible that we own</p> <p>5 claims at Millennium through a participation</p> <p>6 structure through a third-party broker-dealer,</p> <p>7 in which case there wouldn't be a purchase and</p> <p>8 sale agreement or a 3001, and there would have</p> <p>9 been ownership of claims.</p> <p>10 Q. I'm asking specifically about claim</p> <p>11 trades that you have been involved in, not</p> <p>12 Millennium generally.</p> <p>13 A. Oh, me?</p> <p>14 Q. Yeah.</p> <p>15 A. As a person?</p> <p>16 Q. Yeah.</p> <p>17 MR. PIERCE: Object to the form.</p> <p>18 You're asking trade claims that Peter</p> <p>19 Lupoff brought for his own account?</p> <p>20 MR. CHUBAK: No. Whether at</p> <p>21 Millennium that he's personally been</p> <p>22 involved in. Not a separate department.</p> <p>23 A. No, this isn't a separate</p> <p>24 department. You're asking for the names of the</p> <p>25 entities, and what I'm saying is, sitting in my</p>	<p>1 P. Lupoff</p> <p>2 seat in Millennium or at any firm where I</p> <p>3 manage risk, as part of managing risk I have</p> <p>4 the ability to allocate capital to distress as</p> <p>5 a strategy, and then within distressed as a</p> <p>6 strategy, I have the ability to allocate</p> <p>7 capital to trade claims.</p> <p>8 In any way that that expression of</p> <p>9 risk comes in a document, those entities,</p> <p>10 Millennium, Robeco, Tiburon, every one of them</p> <p>11 have multiple vehicles that may be the basis</p> <p>12 under which the actual paperwork is done.</p> <p>13 In all of those places, I would have</p> <p>14 been the person on a call or through an</p> <p>15 electronic medium that would have said, "I buy</p> <p>16 or I sell X, Y, Z trade claim for Y price and Z</p> <p>17 amount." I might not have done the paperwork,</p> <p>18 and the entity might not specifically have</p> <p>19 been, say, Millennium Partners LP or Robeco</p> <p>20 Weiss Peck & Greer distressed/special sits</p> <p>21 fund. The fund I ran there might have been an</p> <p>22 entity that was set up just for the purpose of</p> <p>23 doing private obligations. And that, I</p> <p>24 wouldn't necessarily know or recall.</p> <p>25 Q. Were you involved in the negotiation</p>
Page 12	Page 13
<p>1 P. Lupoff</p> <p>2 of any bankruptcy trade claims while at</p> <p>3 Millennium?</p> <p>4 A. When you say "negotiation," do you</p> <p>5 mean the documentation, or do you mean the</p> <p>6 purchase?</p> <p>7 Q. Discussions with sellers or</p> <p>8 potential sellers.</p> <p>9 MR. PIERCE: Object to the form.</p> <p>10 You can answer.</p> <p>11 A. Okay. Yes.</p> <p>12 Q. Can you identify which sellers or</p> <p>13 potential sellers you engaged directly.</p> <p>14 A. At Millennium in particular, or my</p> <p>15 last 20?</p> <p>16 Q. Within the last 15 years.</p> <p>17 A. Yes, I can.</p> <p>18 Q. Please, tell me.</p> <p>19 A. Okay. So some of the ways in I'm</p> <p>20 which I'm engaged --</p> <p>21 MR. PIERCE: Peter, I'm going to</p> <p>22 interrupt you. Give him names, okay?</p> <p>23 That's what he's asking for. Just give him</p> <p>24 the names. Answer his question as directly</p> <p>25 and succinctly as you can, otherwise we're</p>	<p>1 P. Lupoff</p> <p>2 going to be here all day.</p> <p>3 A. All right.</p> <p>4 MR. CHUBAK: Please don't interrupt</p> <p>5 me mid question other than for an</p> <p>6 objection.</p> <p>7 A. I do need to understand if --</p> <p>8 because -- not to parse words, but am I</p> <p>9 speaking to a seller of trade claims? If I'm</p> <p>10 speaking to an intermediary, or only to the</p> <p>11 original vendor?</p> <p>12 Q. Are you asking about buying a broker</p> <p>13 claim?</p> <p>14 MR. PIERCE: Object to the form.</p> <p>15 A. I don't really distinguish, but</p> <p>16 yeah, I'm asking if, when you say the last 20</p> <p>17 claims I bought, can I name who I bought those</p> <p>18 claims from, do you mean the original creditor</p> <p>19 or the vendor itself, or the intermediary that</p> <p>20 put it together?</p> <p>21 Q. Why don't you tell me the person or</p> <p>22 entity listed on the 3001 notice?</p> <p>23 MR. PIERCE: Object to the form.</p> <p>24 A. It's easier to tell you who I spoke</p> <p>25 to and said, "You're done." It's harder to say</p>

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1 P. Lupoff
2 who was on a 3001, because in some instances, I
3 didn't see the 3001.
4 In other instances, the dealer may
5 have bought the claims from the original
6 vendors, and then I bought them from a dealer,
7 and the dealer may have been in the chain of
8 title. And therefore, I'm a 3001.
9 There are very many permutations
10 about how this could get done. I could explain
11 all of those, if you like.
12 Q. I think I'd like you to explain all
13 of those.
14 A. Okay.
15 MR. PIERCE: I'm sorry. Could you
16 read back the last question.
17 (Question was read back as follows:
18 "QUESTION: I think I'd like you to
19 explain all of those.")
20 MR. PIERCE: You can answer.
21 A. So I'm going to further break it
22 down and ask you the question: Do you want to
23 know just the claims that are bought, or where
24 I have engaged? You're talking about just
25 closed claims, right?

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1 P. Lupoff
2 of Austin. I could be wrong. That's my best
3 recollection. And the lawyer was an LA-based
4 lawyer. I couldn't tell you the name.
5 And that probably is the sum total
6 of all claims at Millennium that either traded,
7 that we actually closed, or that we attempted
8 to close and didn't.
9 And like I said, with the Lehman
10 Brothers, I just simply don't recall. But I do
11 recall the structure and the people pretty
12 intimately.
13 Q. Do you remember the name of the
14 purchasing entity in connection with any of
15 those trades?
16 MR. PIERCE: Object to the form.
17 A. In none of those circumstances at
18 Millennium would I have been involved in
19 anything more than a conversation with in-house
20 counsel, who would have done the documentation
21 on terms of the purchase and sale agreement.
22 But the actual entity that held that, as far as
23 I was concerned, if I saw it in my PNL, I owned
24 it. I didn't really need to understand it was
25 MLP LLC or Millennium Partners, LLC. I

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1 P. Lupoff
2 Q. Yes.
3 A. So there's no more than three and no
4 less than one at Millennium.
5 At Millennium, we spoke to Deutsche
6 Bank's desk on a claim -- I believe that claim
7 was Lehman Brothers. What I don't recall was
8 whether we bought it or not.
9 And I don't recall who the
10 underlying claimants were, or if they were in
11 -- my belief is that they were in aggregate a
12 variety of claims pooled with Deutsche Bank as
13 the counter-party, and Deutsche Bank selling
14 the participation in an SIV.
15 Bought a claim, and I don't recall
16 if we did that or not, but that was the
17 structure of that deal.
18 We bought a claim in the Death Row
19 Records bankruptcy. And I don't recall if we
20 bought that through a broker or through a
21 lawyer. Because we did seek claims both
22 through a broker and through a lawyer. And we
23 bought one.
24 One of them failed. The broker --
25 this is my best recollection, was Fulcrum out

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1 P. Lupoff
2 couldn't tell you.
3 Q. What about in connection with the
4 Death Row Records bankruptcy?
5 A. That's exactly what I'm talking
6 about. Those very few trades of Millennium, I
7 couldn't tell you what the entity for
8 Millennium was that housed that asset.
9 Q. I'm going to refer you to
10 paragraph 5 of the subpoena.
11 A. Yes.
12 Q. Have you written on any
13 bankruptcy-related matters in the past
14 20 years?
15 A. I was just thinking about this.
16 It's feasible that the closest any came was an
17 article I wrote in 2014 about energy prices
18 crashing and the ramifications for bankruptcy
19 in -- amongst high-yield issuance in the energy
20 sector.
21 Q. Did that article have anything to do
22 with bankruptcy trade claims?
23 A. I don't imagine I got specific about
24 instruments, no.
25 MR. CHUBAK: I'd like to mark this

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<p>1 P. Lupoff 2 as Lupoff 2. 3 (Lupoff Exhibit 2, Summary and 4 Opinion of Peter M. Lupoff, marked for 5 identification.) 6 BY MR. CHUBAK: 7 Q. Do you recognize this document? 8 A. I do. 9 Q. Can you tell me what it is. 10 A. It's the expert report that I 11 generated related to this case. 12 Q. I'm going to refer you to page 8 of 13 the report. 14 A. Okay. 15 Yes. 16 Q. It's unsigned. I assume that's a 17 technical defect; is that correct? 18 A. I've seen versions of this -- 19 MR. PIERCE: Object to form. 20 Which? 21 MR. CHUBAK: Which? 22 MR. PIERCE: You're asking him if 23 it's unsigned, or you're asking him if it's 24 a technical defect? 25 BY MR. CHUBAK:</p>	<p>1 P. Lupoff 2 Q. Is it a technical defect that the 3 version that I was sent was not signed? 4 A. Yeah, this seems unusual -- 5 MR. PIERCE: Object to the form. 6 Go ahead. You can answer. 7 You need to give me a moment to 8 object. 9 A. Okay. Sorry. 10 I'm fairly certain I signed the 11 document that was filed, yes. 12 MR. PIERCE: Counsel, I'm happy to 13 send you a signed copy of this. 14 MR. CHUBAK: Okay. 15 BY MR. CHUBAK: 16 Q. I'm going to refer you to Exhibit 17 A -- 18 A. Yes. 19 Q. -- on the following page. 20 Is this a correct copy of your 21 resume as of the date of the report? 22 A. Yes. 23 Q. What was your role at Bank of New 24 York? I'm referring to -- 25 A. I was part of a three-person team</p>
Page 20	Page 21
<p>1 P. Lupoff 2 that started their loan sales and syndications 3 department. I was most intimately involved in 4 the outward-facing part of that process, 5 developing and dealing with the buyers of 6 loans. 7 Q. Did your team trade bankruptcy 8 claims? 9 A. No. 10 Q. What was your role at CIBC? 11 A. I went to CIBC to start a 12 freestanding loan trading business, where I had 13 authority to trade large syndicated loans 14 independent of the bank's decisions about 15 taking risk. 16 Q. Is a syndicated loan different from 17 -- withdrawn. 18 How do syndicated loans trade? 19 A. How do syndicated -- 20 MR. PIERCE: Object to form. 21 BY MR. CHUBAK: 22 Q. How do syndicated loans trade? 23 MR. PIERCE: Object to form. 24 You can answer. 25 A. Would you like me to step you</p>	<p>1 P. Lupoff 2 through the process? 3 Q. Yes. 4 A. Okay. Today, or then? It differs. 5 Q. Then. 6 A. In 1990 -- in 1988 through 1990, 7 there was an explosion in highly leveraged 8 transactions, HLT's, as they were described, 9 which was the bank loan equivalent of the junk 10 bonds and senioried -- and they were -- the 11 loans were senioried to those bonds. 12 Loans -- the syndicated loans are 13 evidenced by a credit agreement. Credit 14 agreement is signed to by the agent of the 15 borrower. And signatories to that initial 16 syndication are those banks that step up to 17 fund the entirety of the loan that's placed. 18 When syndication breaks, as the 19 expression goes, parties to the syndicated loan 20 agreement, which are referred to as assignees, 21 or original signatories, have the right to 22 further on sell additional exposure or buy 23 additional exposure in secondary markets. 24 The secondary market was beginning 25 to develop 1987, on. And so, in my time at</p>

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1 P. Lupoff
2 CIBC, the way we would do loan trades at the
3 time was, we would make a -- what's referred to
4 as a two-sided market, calling other banks.
5 Other banks would call us. That -- they would
6 hear that the X, Y, Z bank facilities syndicate
7 just broke. They would understand the pricing,
8 the company they're interested in. There was
9 an explosion of foreign bank branch offices
10 that came to the states to allocate capital to
11 syndicated loans.

12 And the way most of them bought
13 those syndicated loan was in a secondary
14 market, meaning secondary -- the first market
15 being the initial syndication and then the
16 secondary market being how loans were traded.

17 And then quickly to get through this
18 point for you, a bank would call and say, "I'd
19 like to buy 10 million of the X, Y, Z company
20 loan. Where you would sell it?"

21 I might say 99, meaning one, you
22 know, penny below par. Maybe we bought it at
23 98 as part of the original syndicate.

24 And just to make this simple, say
25 they buy it at 99, I would send them a

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1 P. Lupoff
2 commitment letter. I would send them a form,
3 an assignment agreement, which by that time was
4 typically an exhibit to the credit agreement.

5 We would execute that. We would
6 send it to the agent. Oftentimes, it required
7 agent and borrower consent. Such consent not
8 to be unreasonably withheld.

9 And that buying bank would own the
10 loan. That's the way it worked then.

11 Q. In your role as vice president at
12 CIBC, were you involved in any bankruptcy trade
13 claims?

14 A. No.

15 Q. While at MJ Whitman Third Avenue
16 Funds -- withdrawn.

17 Your resume states that you managed
18 all activities as principal agent in distressed
19 private obligations for Whitman Funds, while at
20 MJ Whitman Third Avenue Funds.

21 Did that encompass -- does
22 distressed private obligations include
23 bankruptcy trade claims?

24 A. Yes.

25 Q. Do you remember -- do you remember

Page 24

1 P. Lupoff
2 any bankruptcy trade claims that were executed
3 while at MJ Whitman?

4 A. Yes.

5 Q. Can you identify them for me.

6 A. The company -- the bankrupt entities
7 by name?

8 Q. You could tell me the cases.

9 A. Sure. And this is -- it'd be a
10 pretty long list. And if you want me to draw
11 in memory, I could go a long time and name
12 names.

13 Q. I'd like you to tell me the names of
14 the cases.

15 A. Well, I'm not going to recall
16 without referring to some notes that I have on
17 this. I'm not going to know off the top of my
18 head. But I'll do the best I can.

19 Q. Okay.

20 A. That okay?

21 So the junk bond debacle of the late
22 80s created this moment where, in 1990, there
23 was a colossal explosion of bankruptcies.
24 There really weren't before that. There was no
25 trading of trade claims or limited trading or

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1 P. Lupoff
2 trade claims or bankruptcy claims until I was
3 at Whitman. It was just sort of a perfect
4 storm that occurred when I was there.

5 And the first sort of wave were
6 highly leveraged retail companies. So discount
7 companies like Ames Department Stores, Caldors
8 -- I'll try to even do this in alphabetical
9 order, if I could think about it.

10 Ames, Bradlees, Caldors, Barneys.
11 Stop & Shop, Grand Union, Elder-Beerman.
12 Kmart. Phar-Mor. It's a P-H. Phar-mor.

13 C. Eaton & Company. E-A-T-O-N.
14 That was up in Canada.

15 MR. PIERCE: Spell it again.

16 THE WITNESS: C. Eaton.

17 A. It's a big department store chain in
18 Canada.

19 Herman's Sporting Goods Store.

20 I'm drawing a blank. I mean, I
21 could, if you would like, over the course of
22 our time today, as names pop in my head -- that
23 sort of the way my memory works.

24 Q. Sure.

25 Your resume also indicates that

1 P. Lupoff
2 while at MJ Whitman Third Avenue, you ran a
3 department of approximately 8 to 10
4 professionals.

5 Can you tell me -- can you identify
6 those professionals and tell me what their
7 roles were in connection with the bankruptcy
8 trade claim business?

9 A. Sure. Do you want just the people
10 that were related to the trade claim
11 business --

12 Q. Yes.

13 A. -- or all of the people?

14 Q. Just the people related to the trade
15 claim business.

16 A. Okay. Kevin Wyman, W-Y-M-A-N.

17 Q. Can you tell me a little bit about
18 what they did in connection with the trade
19 claim basis?

20 MR. PIERCE: Object to form.

21 A. So each person by name --

22 MR. PIERCE: Got to pause.

23 Object to form.

24 You can answer.

25 A. Each person and then specifically

1 P. Lupoff

2 what they did?

3 Q. For example, person A sourced
4 bankruptcy claims.

5 A. Sure.

6 Everyone I'm going to tell you
7 about, with one or two exceptions, sourced
8 bankruptcy claims.

9 I did as well.

10 And then I would take the bigger
11 claims. Oftentimes, those would be the calls I
12 would make, or the ones where my younger people
13 or more junior people were having trouble.

14 So Kevin Wyman is one.

15 Jed Kelly.

16 Gary Cohen.

17 Greg Bany. That's B-A-N-Y.

18 Jeremy Motz, M-O-T-Z.

19 Sonya Danne. That's S-O-N-Y-A. Her
20 last name, married name now, D-A-N-N-E. She
21 was more administrative on the desk.

22 I forgot one that was a sourcer
23 also, Allison Cutler. She called trade
24 creditors directly.

25 Joseph Nadkharni, N-A-D-K-H-A-R-N-I.

1 P. Lupoff

2 He acted more in a paralegal-like capacity,
3 processing the paperwork.

4 There was at the very end of my time
5 there, there was a person named Mary, and I
6 can't remember Mary's last name. I apologize.

7 Q. Can you tell me which of those
8 persons were involved in negotiating directly
9 with creditors in bankruptcy cases?

10 A. When you say "negotiate," do you
11 mean paperwork, or do you mean the getting to
12 an oral agreement, an initial agreement on a
13 trade?

14 Q. Why don't you tell me both.

15 A. Okay. Every one of those that was a
16 sourcer, as I described, would have been
17 engaged to a degree in getting to "yes." Even
18 if ultimately I had to approve it, a price,
19 they were transmitting that information.
20 "We'll pay you \$0.30 for your Barneys -- your
21 \$1 million Barneys claim."

22 When we got to "yes" on that, and we
23 followed up with documentation, to the extent
24 we drove that, which isn't always the case,
25 those sourcers would have distributed to them

1 P. Lupoff

2 the first cut of a purchase and sale agreement,
3 or a written confirm, if a written confirmation
4 was done before a purchase and sale agreement.

5 They would not have written those
6 documents because they would have been somewhat
7 standardized and then customized to the
8 particulars of whatever trade they were working
9 on closing.

10 To the extent that they were minor
11 issues, which they mostly always were, in terms
12 of negotiating a document, rather than
13 five-day, business day notice to cure an issue,
14 the other side wants ten. We did such a high
15 volume of business that the nuance around that
16 was fairly well understood at one point, what's
17 reasonable. So I gave as much latitude as
18 possible around the simplest of the ministerial
19 aspects of the documentation.

20 To the extent things became more
21 material, we had in-house counsel at Whitman.
22 As mentioned, Joseph Nadkharni as a paralegal.
23 And then there was me. And we oftentimes would
24 mull over what to do in order to give a trade
25 creditor a document that worked for them and

1 P. Lupoff
2 worked for us. So oftentimes, the issues that
3 could arise were easily sorted out and
4 satisfied by thinking it through and discussing
5 it.
6 Q. So you were involved in the
7 negotiation of trade documentation with
8 creditors; is that correct?
9 A. We're about talking about me now?
10 Not just --
11 MR. PIERCE: Object to form.
12 BY MR. CHUBAK:
13 Q. You can answer.
14 MR. CHUBAK: Can you read the
15 question back, please.
16 (Question was read back as follows:
17 "QUESTION: So you were involved in
18 the negotiation of trade documentation
19 with creditors; is that correct?")
20 MR. PIERCE: Object to form.
21 Do you mean only trade
22 documentation?
23 MR. CHUBAK: No, trade documents.
24 MR. PIERCE: Object to form.
25 BY MR. CHUBAK:

1 P. Lupoff
2 that were factors?
3 A. Yes.
4 Q. What categories of creditors did you
5 deal with directly?
6 MR. PIERCE: Object to the form.
7 You can answer.
8 A. I'm not sure I understand
9 "category." You mean, manufacturer? Service
10 provider?
11 Q. Sure.
12 A. Yeah. The full gamut of it. The
13 way we operated as desk, we had 8 to 10 people.
14 I have this visual right now of this desk and
15 sitting in the desk in the center, as I did
16 with people all making the calls that we did,
17 with the ability to pick up on each other's
18 lines.
19 Over the course of a day, there
20 could a seamless number of calls where Jed or
21 Kevin or Mary, or whoever it was would have
22 something that might require me to come in and
23 help explain. And I would pick up and do that.
24 In some instances, I would drive it.
25 In other instances, I would just --

1 P. Lupoff
2 Q. I'm going to ask the question again.
3 When a creditor had an issue with
4 proposed trade documentation, were you involved
5 in the negotiation of that documentation with
6 the creditor directly?
7 A. Oftentimes.
8 Q. Do you remember any specific
9 bankruptcy trade claims that you were involved
10 in?
11 MR. PIERCE: Object to form.
12 A. Are you asking for anecdotes?
13 Q. I'm asking for specific creditors
14 that you dealt with.
15 A. Yes.
16 Q. Can you tell me their names.
17 A. Heller Financial. The easiest ones
18 to mention would be the repeat ones, and the
19 repeat ones were the big ones. The big ones
20 were oftentimes factors who were factoring
21 receivables prepetition.
22 And those kinds of counterparties, I
23 almost most dealt with exclusively, because the
24 scale of the transactions were significant.
25 Q. Do you remember dealing creditors

1 P. Lupoff
2 particularly, if it's much bigger, I might do
3 it entirely myself.
4 Q. Do you recall the dollar amount of
5 trade claim -- of bankruptcy claims that your
6 desk purchased during the years you were at MJ
7 Whitman?
8 A. I can speculate on it. I can't tell
9 you an absolute number, no.
10 It would have been the vast majority
11 of what I have done in my career, in terms of
12 number of claims. Not necessarily the dollar,
13 notional dollar amount.
14 Q. While at MJ Whitman Third Avenue
15 Funds, did you trade syndicated loans?
16 A. Yes.
17 Q. Did your desk -- did other persons
18 at your desk also trade syndicated loans?
19 A. Similarly, there would have been
20 sourcers for loans. A different exercise.
21 They would have covered banks as a constituent
22 group, not as suppliers.
23 Q. While at Lehman Brothers from 1997
24 to '98, did you work as a trader-manager --
25 withdrawn.

1 P. Lupoff
2 In your role as senior vice
3 president at Lehman Brothers, were you involved
4 in bankruptcy trade claims?
5 A. Yes.
6 Q. Can you tell me about any specific
7 trades that you were involved in during your
8 one year there.
9 A. I remember trading Caldors. I
10 remember trading Levitz.
11 MR. PIERCE: Say that again.
12 THE WITNESS: Levitz. Furniture
13 company.
14 A. We wrote a number of
15 bankruptcy-triggered puts for vendors, which
16 meant that we gave them -- they're like an
17 option that gave a vendor the right, but not
18 the obligation, to put claims to us to the
19 extent a company filed that they were doing
20 business with.
21 The notional amount of that was way
22 larger than actual trades in claims. I believe
23 we did Barneys. Offhand, that's the best I
24 recall.
25 Q. Do you recall how many bankruptcy

1 P. Lupoff
2 trade claims you were involved while at Lehman?
3 MR. PIERCE: Object to form.
4 A. Surely, less than Whitman and more
5 than successive --
6 Q. Was it more than ten?
7 A. And -- do you mind if I ask for some
8 clarifications.
9 Q. Of course.
10 A. Would you distinguish between a
11 trade claim and writing a vendor an option to
12 put a claim to us?
13 Q. Would you consider those --
14 withdrawn.
15 Was a bankruptcy put, as you put it,
16 did that involve a Rule 3001 transfer?
17 A. If they exercised it, it meant
18 claims were created and they were putting
19 claims to us. In that instance, the claims put
20 to us would have been transferred, yes.
21 Q. In connection with the documentation
22 of a bankruptcy put, was a Rule 3001 transfer
23 of claim an evidence of transfer signed and
24 filed with bankruptcy court?
25 MR. PIERCE: Object to form.

1 P. Lupoff
2 You can answer.
3 A. Not with regard to the option
4 created. Only its execution. Right? Because
5 I'd be giving a supplier to Levitz the right
6 but not the obligation to, say, put \$20 million
7 of claims to us.
8 If Levitz didn't file bankruptcy,
9 that put expires. It's worthless. They did
10 file bankruptcy. And in some instances, claims
11 were put to us. When claims were put to us, it
12 required a purchase and sale agreement, and the
13 3001(e) filing.
14 Q. Sir, I'm asking about plain vanilla
15 agreements that resulted in the transfer of a
16 claim for a specific dollar amount, not puts.
17 A. Okay.
18 Q. Can you tell me if you executed --
19 if you were involved in more than ten of those
20 bankruptcy claim trades.
21 A. As best --
22 MR. PIERCE: Object to form. Just
23 pause.
24 THE WITNESS: Sorry about that.
25 MR. PIERCE: Object to form.

1 P. Lupoff
2 You can answer.
3 A. As best as I can recall, and as I
4 think through the volume of puts that we did
5 and how those eventuated in filings, I would
6 assume in excess of ten claims, yes.
7 Q. Do you recall the entity that filed
8 the claim transfer notice in connection with
9 those trades?
10 MR. PIERCE: Object to form.
11 You can answer.
12 A. Similar to Millennium, a legal
13 department would have done that. I couldn't
14 tell you what the actual entity on the document
15 would have been.
16 Q. What was your role in connection
17 with those trades?
18 MR. PIERCE: Object to form. Lacks
19 foundation.
20 Go ahead.
21 A. As trader in the prop unit at Lehman
22 for all things private, particularly with a
23 focus on distressed -- I say that because there
24 was a par loan trader that did just performing
25 loans, commercial syndicated loans.

1 P. Lupoff
2 All things private and distressed
3 was my purview. I made markets in them,
4 meaning I set prices where we were buyer,
5 prices where we were seller. I did that for
6 proprietary money, as well as for creating
7 markets for client flow through the sell side
8 operation of Lehman to facilitate customer
9 orders.
10 We thought of trade creditors as no
11 less than clients than we thought of
12 institutional buyers. We would have never
13 really made that distinction. So we would have
14 managed those relationships as well.
15 Would have spearheaded the decision
16 to do the research work on valuing all things
17 distressed. And in valuing all things
18 distressed, you value entire capital structure
19 of a company that is stressed and near
20 bankruptcy, or is in bankruptcy. We'd be
21 valuing -- the analyst may value bonds. I
22 didn't trade the bonds. I just traded in
23 evaluation of, let's say, Levitz, if they were
24 bonds, I didn't trade them. I just would have
25 been trading bank loans and trade claims and

1 P. Lupoff
2 then writing option structures prepetition.
3 I ran those businesses more narrowly
4 as a trader of those. If anybody in the room
5 at Lehman Brothers in the trading room had a
6 client, whether it's an institutional buy side
7 firm that focussed on distressed, or trade
8 creditors that they might have called because
9 we had a sourcing operation there, too, sort of
10 less extensive than at Whitman, I would have
11 set prices. I would have either communicated
12 directly with a client. Or like at Whitman, I
13 would have communicated through the party that
14 deals with the client.
15 And then executing and committing
16 risk capital based on an initial commitment,
17 that would have been my obligation solely.
18 Q. Whether at Lehman or MJ Whitman,
19 were you ever involved in trades that -- where
20 the creditor refused to sign trade
21 documentation after agreement on price was
22 reached?
23 A. Yes.
24 Q. Can you identify those potential
25 trades.

1 P. Lupoff
2 MR. PIERCE: Can you read the
3 question back, please.
4 (Question was read back as follows:
5 "QUESTION: Can you identify those
6 potential trades.")
7 MR. PIERCE: Can you read the
8 previous question.
9 Question was read back as follows:
10 "QUESTION: Whether at Lehman or MJ
11 Whitman, were you ever involved in trades
12 that -- where the creditor refused to sign
13 trade documentation after agreement on
14 price was reached?")
15 MR. PIERCE: Object to form.
16 You can answer.
17 A. I remember -- I have a visceral
18 reaction and memory of those moments because
19 they're infrequent, and they're painful. And
20 in my experiences, in my personal experiences,
21 were entirely about a change in market price
22 that went against the other side, that went
23 against the seller.
24 I believe I recall one. I don't
25 remember which discount retailer it was. But

1 P. Lupoff
2 we bought a claim against a small -- from a
3 small vendor in California, that they
4 themselves were small. The claim was small.
5 \$20- -- 30,000 face amount.
6 And there was a change in the case
7 where claims market prices moved 10 or
8 20 points higher. And had a conversation where
9 they said, "You won't sue us because we're
10 judgment-proof and it's too small a claim."
11 That happened once or twice, where
12 in some instances, we would make the commercial
13 decision to pay a higher price, if that was
14 what was necessary, even though it was bad
15 behavior. It was bad faith. And -- but there
16 were at least two or three, I think, over that
17 period of time that you mentioned, Lehman
18 Brothers and MJ Whitman, where people refused
19 to sign documents and walked.
20 MR. PIERCE: Jeff, the next 10,
21 minutes or 5 minutes, I'm going to need to
22 take a break.
23 MR. CHUBAK: That's fine.
24 MR. PIERCE: Want to do it now?
25 MR. CHUBAK: We could break now, if

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1 P. Lupoff
2 you'd like.
3 MR. PIERCE: Great.
4 (Recess is taken.)
5 BY MR. CHUBAK:
6 Q. So prior to our break I had asked
7 you a question about bankruptcy trade claims
8 that failed to close because the creditor
9 declined to enter into trade documentation.
10 Do you recall that?
11 A. Yeah, I recall your question. Yes.
12 Q. And you had mentioned that you
13 recall two or three trade claims that failed to
14 close -- withdrawn.
15 And do you recall having mentioned
16 that while at Lehman Brothers or MJ Whitman,
17 you recall two or three trade claim where --
18 that they were never documented following
19 agreement on price?
20 MR. PIERCE: Object to form.
21 A. Is that the same question? I don't
22 follow.
23 Q. I'm asking you if you -- withdrawn.
24 I had asked you about bankruptcy
25 trade claims where written documentation wasn't

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1 P. Lupoff
2 entered into following an agreement on price.
3 Do you recall that?
4 A. Yes.
5 Q. Do you recall your answer to the
6 question?
7 A. Yes.
8 Q. So while at Lehman or MJ Whitman,
9 how many -- how many trades do you recall where
10 -- where you were unable to enter into trade
11 documentation following agreement on price?
12 MR. PIERCE: Object to form.
13 You can answer.
14 A. Two to three, but only because the
15 other side refused to do documentation.
16 Q. Did you consult with internal
17 counsel about those trades?
18 MR. PIERCE: I'm going to object to
19 form, and also instruct the witness not to
20 answer that. That's privileged.
21 MR. CHUBAK: I'm not asking about
22 privileged communications.
23 MR. PIERCE: You just asked him
24 whether he talked to a lawyer about whether
25 or not --

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1 P. Lupoff
2 MR. CHUBAK: It's a "yes" or "no"
3 question. I'm not asking about privileged
4 communications.
5 MR. PIERCE: You're asking whether
6 he talked to a lawyer about specific
7 subject matter. That means you're getting
8 into the content of communications. If you
9 want to ask whether he ever spoke to any
10 lawyers at any of these places, you can do
11 that.
12 I think you asked about the subject
13 of the conversation. You traipsed through
14 the line of privilege, and I have to
15 instruct him not to answer.
16 MR. CHUBAK: I respectfully
17 disagree.
18 MR. PIERCE: That's fine.
19 MR. CHUBAK: I'm not asking about a
20 privileged communication.
21 MR. PIERCE: You can't answer the
22 question.
23 You can ask your next question.
24 BY MR. CHUBAK:
25 Q. Did any of those failed trades

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1 P. Lupoff
2 result in lawsuits?
3 A. I don't recall. Certainly not to
4 the extent where I was engaged in something
5 ongoing.
6 Q. Do you remember the names of the
7 trade creditors in connection with those
8 trades?
9 A. I do not.
10 Q. Why did you leave Lehman in
11 May 1998?
12 A. I had done a lot, I felt. I was
13 grateful for my time in investment business and
14 wanted to try some new things.
15 I had grown a little weary of large
16 institutions after being so integral to the way
17 things worked at Whitman and Third Avenue.
18 Lehman was an awesome institution with very
19 good people, but it left me at a place where I
20 wanted to try new things, and I tried new
21 things.
22 Q. What is Tiburon Holdings LLC?
23 A. You're talking about the time period
24 post Lehman?
25 Q. Yes.

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1 P. Lupoff
2 A. It was an LLC that I had formed for
3 the purposes of doing a variety of different
4 activities post my investment management
5 career, and was the entity that I operated
6 through as a limited liability company.
7 Q. Were you the sole member of the LLC?
8 A. Yes.
9 Q. Did you have outside investors?
10 A. No.
11 Q. Did Tiburon Holdings LLC trade
12 bankruptcy claims?
13 A. No. We owned one claim, but we
14 didn't trade claims.
15 Q. How did Tiburon Holdings LLC come to
16 acquire that claim?
17 MR. PIERCE: Object to form.
18 A. We were a vendor to a bankrupt
19 debtor.
20 Q. Oh, okay.
21 What was the debtor?
22 A. A company called hookt.com.
23 H-O-O-K-T.com
24 Q. Did Tiburon Holdings LLC sell that
25 claim?

1 P. Lupoff
2 A. We kept it. We contemplated it, but
3 we kept the claim.
4 Q. Did Tiburon Holdings trade
5 syndicated loans?
6 A. No.
7 Q. What is Schultze Asset Management
8 LLC?
9 A. Schultze Asset Management is a
10 distressed manager in Purchase, New York.
11 Q. Can you tell me who the members are
12 of Schultze Asset Management?
13 A. I believe to this day --
14 MR. PIERCE: Object to form.
15 You can answer.
16 A. I believe that George Schultze is
17 the sole manager -- sole member.
18 Q. Did Schultze Asset Management trade
19 bankruptcy claims?
20 A. Yes.
21 Q. Can you tell me how big --
22 withdrawn.
23 Did Schultze Asset Management have a
24 bankruptcy trade claim desk?
25 A. No.

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1 P. Lupoff
2 Q. Who at Schultze Asset Management was
3 responsible for trading bankruptcy claims?
4 A. Me.
5 Q. Do you recall how many bankruptcy
6 trade claims you entered into at Schultze Asset
7 Management?
8 A. Under five.
9 Q. Do you remember what cases offhand?
10 A. Offhand, I just call a company
11 called Footstar.
12 MR. PIERCE: Spell that.
13 A. F-O-O-T-S-T-A-R.
14 Q. Were you responsible for sourcing
15 bankruptcy claims?
16 A. I don't -- I can't answer that
17 question in a simple way.
18 Q. Can you answer it in a nonsimple
19 way?
20 A. Schultze was a distressed manager.
21 With a focus on distress, we would have engaged
22 broker-dealers, and we would have acquired
23 claims most likely through broker-dealers. And
24 I would been the point person for working with
25 the broker-dealers on claims.

1 P. Lupoff
2 Q. Which brokers did you work with?
3 A. I won't recall offhand.
4 Q. Can you tell me the approximate
5 dollar amount of the under five bankruptcy
6 trade claims that were purchased at Schultze.
7 A. I can't say I recall.
8 Q. Do you recall the name that the
9 entity identified as the purchaser on the
10 Rule 3001 transfer?
11 A. I can't say I recall that either.
12 Q. What is EagleRock Capital
13 Management?
14 A. Event-driven hedge fund here in New
15 York at the time.
16 Q. Why did you leave Schultze to go to
17 EagleRock?
18 THE WITNESS: Is it appropriate to
19 ask for a moment with you to talk about
20 this?
21 MR. PIERCE: Nope. You've got to
22 answer his question.
23 MR. CHUBAK: No.
24 A. I believe that I saw some things
25 that, morally, I couldn't accept at that firm,

1 P. Lupoff
2 and left. And as did our senior analyst.
3 Q. Did those morally questionable
4 things have anything to do with the bankruptcy
5 claim trade --
6 A. No.
7 Q. -- business segments?
8 What was your role at EagleRock?
9 A. I was a co-portfolio manager.
10 Focussed largely on distressed and all things
11 private.
12 Q. In your role as portfolio manager,
13 did you trade bankruptcy claims?
14 A. I did.
15 Q. Can you tell me how big the
16 bankruptcy trade -- withdrawn.
17 Do you have a bankruptcy trade claim
18 desk at EagleRock?
19 A. No.
20 Q. Can you tell me who at EagleRock was
21 responsible for trading bankruptcy claims.
22 A. That would be me.
23 Q. Was it just you?
24 A. We had a paralegal that helped
25 settle all things private, including trade

1 P. Lupoff
2 claims.
3 Q. How did you source bankruptcy
4 claims?
5 A. Similarly, as would be the case with
6 all of the hedge funds that I worked at,
7 largely through intermediaries.
8 Q. When you say all of the hedge funds
9 that you worked at, does that include Lehman
10 Brothers?
11 A. No, Lehman Brothers is an investment
12 bank for prop desk. Although, there, too, we
13 probably sourced most of our claims through
14 brokers.
15 Q. At MJ Whitman, did you also source
16 most of your claims through brokers?
17 A. We had a sourcing team, as I laid
18 out for you. Although, we did buy from brokers
19 from time to time.
20 Q. While at EagleRock, did you ever --
21 did EagleRock -- withdrawn.
22 Do you recall the name of the entity
23 listed as the transfer on the Rule 3001
24 transfer for bankruptcy claims purchased?
25 A. I couldn't tell you, no.

1 P. Lupoff
2 Q. In your role as portfolio manager at
3 EagleRock, how many bankruptcy trades were you
4 involved in?
5 A. In number of transactions, probably
6 5 to 10. However, in one or two transactions,
7 those transactions may have been pooled claims,
8 where the actual number of claims were
9 significant.
10 MR. CHUBAK: Can you read that back.
11 (Answer was read back as follows:
12 "ANSWER: In number of transactions,
13 probably 5 to 10. However, in one or two
14 transactions, those transactions may have
15 been pooled claims, where the actual
16 number of claims were significant.")
17 BY MR. CHUBAK:
18 Q. What is a pooled claim?
19 A. When we were talking about Lehman,
20 for example, and I described how Deutsche Bank
21 might have sold a hundred million dollars'
22 worth of Lehman claims in a participation.
23 I believe at EagleRock we bought at
24 least one claim from Goldman Sachs, where we
25 participated in a much larger number of claims

1 P. Lupoff
2 that were pooled together to create one
3 structured product, if you will.
4 So a hundred million dollars of
5 Parmalat claims sold by Goldman Sachs,
6 EagleRock might have taken 25 million of that,
7 but the Parmalat claims that made up that
8 hundred million dollar pool might have been
9 thousands of claims.
10 Q. While at EagleRock, do you recall
11 ever having purchased -- been involved in
12 purchase of a nonbroker claim?
13 A. Yes.
14 Q. Can you identify that claim or
15 claims.
16 A. Yes. I believe it was Footstar.
17 Q. Do you recall the name of the
18 creditor whose claim you purchased?
19 A. I do not.
20 Q. Do you recall the dollar amount?
21 A. I don't.
22 Q. Do you recall the name of the entity
23 that's listed as the transferee on the
24 Rule 3001 transfer?
25 A. No.

1 P. Lupoff
2 Q. How many claims were you involved --
3 withdrawn.
4 How many bankruptcy claims were you
5 involved in the purchase of in Footstar?
6 A. I can't say I recall.
7 Q. Was it more than one?
8 A. Yes.
9 Q. How many nonbrokered bankruptcy
10 claim transactions were you involved in at
11 EagleRock?
12 A. I can't say I recall.
13 Q. Was it more than ten?
14 A. We didn't do more than ten in total.
15 Q. Okay. So --
16 A. So some subset of that.
17 Q. And did you do more than five?
18 A. I'm sure not.
19 Q. And one of those five was a -- was a
20 participation transaction that you referred to
21 earlier?
22 A. One of the 5 to 10 was in a Parmalat
23 trade with Goldman, yes.
24 Q. Why did you leave EagleRock to go to
25 Azura Capital Partners?

1 P. Lupoff
2 A. An opportunity to start and run my
3 own fund for the first time with a partner who
4 was a good friend of mine.
5 Q. Who is that partner?
6 A. Mark May, M-A-Y.
7 Q. In your role as co-portfolio manager
8 at Azura, did you trade bankruptcy claims?
9 A. I would have, but Azura raised the
10 money and then returned the money. We never
11 operated -- we never took in outside capital
12 and deployed that capital.
13 Q. Why was the capital not deployed?
14 A. My partner chose to return back to
15 his much larger firm and we wound down the
16 launch.
17 Q. Was is Robeco U.S.A.?
18 A. Robeco is a Dutch parent. 3 -- at
19 the time, a \$380 billion asset manager in
20 Europe.
21 Q. In your role as portfolio manager at
22 Robeco, were you involved in the acquisition of
23 bankruptcy claims?
24 A. Yes.
25 Q. Can you tell me if you bought broker

1 P. Lupoff
2 claims?
3 A. Yes.
4 Q. Did you buy nonbroker claims as
5 well?
6 A. I can't say I recall.
7 Q. Which brokers did you utilize?
8 A. I won't know off the top of my head,
9 specifically. I will say over the entirety of
10 my career working at hedge funds, where we
11 bought through brokers, there were just a
12 handful that were regular and that anyone would
13 have used, and would have been the people that
14 we dealt with day in/day out, speaking about
15 markets and pricing and ultimately, executing
16 where we bought claims.
17 But I'm never -- unless there's a
18 unique circumstance where I remember it, it's
19 going to be hard for me to recall the specific
20 broker-dealer.
21 Q. How many bankruptcy claims were you
22 involved in the purchase of while at Robeco,
23 brokered or nonbrokered?
24 A. Five or less would be my guess, as
25 best as I can recall.

1 P. Lupoff
2 Q. What was the extent of your
3 involvement?
4 A. Similarly, I would have been the
5 point person for pricing risk, for valuing
6 claims as part of the larger capitalization of
7 a bankrupt company. For buying those claims,
8 for then executing in markets, committing
9 capital, but then ultimately turning the
10 paperwork to in-house counsel to document.
11 Q. Do you recall the name of the
12 purchasing entity listed on the Rule 3001
13 transfer?
14 A. I know specifically at Robeco there
15 was an SIV, and I couldn't tell you the name of
16 it.
17 Q. Did you trade syndicated loans while
18 at Robeco?
19 A. Yes.
20 Q. Why did you leave Robeco for
21 Millennium?
22 A. Robeco wanted to wind down its U.S.
23 asset management business. And while we could
24 have stayed and gone through some sunset period
25 with them, Millennium had made overtures and

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1 P. Lupoff
2 made a very attractive offer to take our team
3 over to Millennium.
4 Q. How big was your team?
5 A. Three.
6 Q. Was anyone on your team involved in
7 the five or less bankruptcy trade claims that
8 you entered into, that you were involved in at
9 Robeco?
10 A. Can you repeat that, please.
11 (Question was read back as follows:
12 "QUESTION: Was anyone on your team
13 involved in the five or less bankruptcy
14 trade claims that you entered into, that
15 you were involved in at Robeco?")
16 A. Do you mean in terms of pricing or
17 execution? No.
18 Q. How many bankruptcy trade claims for
19 you involved in at Millennium?
20 MR. PIERCE: Objection. Asked and
21 answered.
22 You can answer.
23 A. By "involved," you mean actually
24 closed?
25 Q. Sure.

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1 P. Lupoff
2 A. I think I do. I think it was --
3 unless it's the one we bought. I think this is
4 the one that failed.
5 I think his name is Daz, D-A-Z.
6 Dillinger, D-I-L-L -- like the gun, however
7 that's spelled.
8 Q. Why did you leave Millennium?
9 A. Enormous opportunity in bank debt
10 coming out of the financial crisis. And
11 Millennium had no interest in doing less liquid
12 obligations after the financial crisis.
13 Q. Is Tiburon Capital Management LLC
14 separate from Tiburon Holdings?
15 A. Yes.
16 Q. Are you the sole member of Tiburon
17 Capital Management?
18 A. I wound down to run Capital
19 Management, unless you want to talk about a
20 time period.
21 Q. Yeah.
22 I'm asking, when did you wind down
23 Tiburon Capital Management?
24 A. In June of 2017, I think.
25 Q. What was the dollar amount that you

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1 P. Lupoff
2 A. Just the one to two -- one, two, or
3 three that we discussed.
4 Q. Were you involved in any bankruptcy
5 trades that failed to close while at
6 Millennium?
7 A. Yes.
8 Q. Can you describe those.
9 MR. PIERCE: Object to form.
10 A. There was one. It was the Death Row
11 Records claim. The vendor, upon due diligence
12 after we agreed on price and amount, appeared
13 to have sold the claim to somebody else at the
14 same time.
15 Q. Did that failed trade result in a
16 lawsuit?
17 A. No.
18 Q. Do you remember the size of the
19 claim?
20 A. In excess of 25, maybe in excess of
21 50 million.
22 Q. Do you remember the name of the
23 creditor?
24 A. It was a rapper.
25 Q. Do you recall which rapper?

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1 P. Lupoff
2 managed in or about June 2009 to
3 September 2012, say, before you joined Gray &
4 Company?
5 A. I think we were \$65 million in
6 assets under management when we sold the
7 business to Gray & Company.
8 MR. PIERCE: Is that million or
9 billion?
10 THE WITNESS: Million.
11 BY MR. CHUBAK:
12 Q. About how much of your portfolio was
13 allocated to bankruptcy trade claims?
14 A. At Tiburon in that time?
15 Q. Correct.
16 A. I'm fairly certain it was zero.
17 Q. What about after Tiburon was sold to
18 Gray & Company?
19 A. The assets that we managed expanded
20 significantly. We still didn't do trade
21 claims, to the best of my recollection.
22 If we had a claim, it was an
23 oversight. It wouldn't be significant.
24 Q. What is Lupoff Friends and Family
25 Interests LLC?

1 P. Lupoff
2 A. It's my family office for investing
3 personal capital.
4 Q. Do you have outside investors?
5 A. I do not. Not other than family
6 members.
7 Q. Does Lupoff Friends and Family
8 Interests buy bankruptcy claims?
9 A. We do not buy claims directly.
10 Q. How do you buy bankruptcy claims?
11 MR. PIERCE: Object to form.
12 Mischaracterizes his testimony. Lack of
13 foundation.
14 Go ahead.
15 A. We can allocate capital third-party
16 managers. And the among the third-party
17 managers we're allocating capital to is a hedge
18 fund that invests in trade claims.
19 Q. What is the name of that hedge fund?
20 A. Hain, H-A-I-N, Capital.
21 And we've made a commitment. We
22 have not allocated, but we made a commitment.
23 MR. PIERCE: Jeff, I just want to
24 give you some forewarning. At 12 o'clock,
25 I need to do a brief call in another

1 P. Lupoff
2 matter. I just want to let you know that's
3 coming.
4 MR. CHUBAK: Okay. That's fine.
5 How long a call do you think? I don't
6 think we need a need a lunch break,
7 frankly.
8 MR. PIERCE: I thought that there
9 was, when I scheduled for that. So I
10 apologize for that.
11 (Discussion held off the record.)
12 BY MR. CHUBAK:
13 Q. I'm going to refer you to page 1 of
14 your report.
15 A. Okay.
16 Q. Where you wrote that you base your
17 opinion on your long history in the claims
18 trading field and multiple billions of dollars
19 of consummated trades that you participated in
20 over the past 25 years.
21 A. Yes.
22 Q. Is your experience principally based
23 on your time at MJ Whitman and Lehman?
24 MR. PIERCE: Object to form.
25 A. No.

1 P. Lupoff
2 Q. What is it based on?
3 A. I have a career that's over 25 years
4 of engaging in private obligations.
5 Specifically, covering all creditors and
6 interest, whether they're trade creditors,
7 factors, or institutional buy side clients.
8 At Whitman, we operated as principal
9 buying claims at Whitman, as well, for our
10 underlying funds. I ran a fund there that
11 invested in claims.
12 Subsequent to that, I've always had
13 distressed as part of the mandate of every
14 asset manager I worked at.
15 Q. So when you're referring to multiple
16 billions of dollars of consummated trades --
17 MR. PIERCE: Did you finish your
18 answer?
19 THE WITNESS: No.
20 MR. PIERCE: Let the witness finish
21 his answer. Thank you.
22 A. So at all of the hedge funds where
23 I've worked, were distressed as part of the
24 strategy, trade claims is one of the ways that
25 you can express an investment. And so, at all

1 P. Lupoff
2 of those firms, whether we bought one claim in
3 that year or we were highly active in the prior
4 years, it's in the capitalization of companies
5 we value. Would not choose trade claims just
6 because we want to own trade claims. Because
7 my allocation, my strategy was never that
8 narrow.
9 So trade claims as a prospect to
10 invest in, I would have been in markets daily,
11 bidding claims, valuing claims, but may have
12 chose other parts of the capitalization to
13 express that risk. And/or I might have bid for
14 claims and just simply not got the chance to
15 buy them.
16 And then finally, with my time at
17 Tiburon and Lupoff Friends and Family, the work
18 around the trade claim sector involved to more
19 advisory. So when Tiburon was bought by Gray &
20 Company, I became Gray & Company's chief
21 investment officer, I provided advisory work to
22 pension endowment clients. And the pension
23 endowment clients we advised, many of them had
24 investments with managers that did distress,
25 and I would spend the time to talk about the

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1 P. Lupoff
2 narrow strategies of some of these firms with
3 regard to trade claims, and would need to
4 remain steeped in the trade claim markets, how
5 their opportunities there were relative to
6 other parts of the capitalization.
7 Q. When you wrote that you have been
8 involved in billions of dollars of consummated
9 and some failed to revise trades, are you
10 referring to bankruptcy trade claims and other
11 distressed opportunities or just bankruptcy
12 trade claims?
13 A. Just trade claims.
14 Q. You testified earlier today that you
15 didn't recall a number of any -- withdrawn.
16 Is it your testimony today that
17 you've been involved in multiple billions of
18 dollars of consummated bankruptcy trade claims?
19 A. Yes.
20 Q. Earlier today, I asked you about the
21 names of the purchasing entities on those
22 bankruptcy trade claims, and you couldn't give
23 me -- identify the name of the transferee on
24 the Rule 3001 transfer; is that correct?
25 A. Correct.

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1 P. Lupoff
2 claims from a Heller or from a Sanwa credit.
3 I don't think those numbers are
4 outside of the scope of people that --
5 MR. PIERCE: There's no pending
6 question.
7 THE WITNESS: Okay.
8 MR. CHUBAK: Please let him answer.
9 Let him finish his question.
10 MR. PIERCE: He wasn't asking a
11 question. He was answering.
12 Counsel, the last couple of
13 questions you have been -- your facial
14 expression has suggested a certain
15 incredulity, that you don't believe the
16 numbers that are written down on the firm.
17 And I wouldn't say that they were
18 harassing, but they're definitely -- you're
19 challenging him.
20 Why don't you ask some questions
21 about some facts, and then he could give
22 you those. I'm sure you'll have ample
23 opportunity to argue to the Judge about why
24 this witness's CV is -- I'm not done yet.
25 MR. CHUBAK: You could object to

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1 P. Lupoff
2 Q. Earlier today, I asked you questions
3 about trade creditors that you engaged with
4 directly, and you couldn't give me the names of
5 trade creditors other than a few factors; is
6 that correct?
7 MR. PIERCE: Object to form.
8 A. That's correct.
9 Q. So when you say you were involved in
10 multiple billions of dollars of consummated
11 bankruptcy trade claims, what was the degree of
12 your involvement?
13 MR. PIERCE: Object to form.
14 You can answer the question.
15 A. The notional amount of the claims
16 that I recall trading.
17 I don't think you asked for a dollar
18 amount attached to any particular name. You
19 just asked names.
20 But when I just think of a handful,
21 I get pretty quickly to some numbers that make
22 it easy to believe it is in excess of 2
23 billion, and probably in excess of 10,000
24 claims in number, considering that many of the
25 claims were pooled or were buying factored

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1 P. Lupoff
2 questions --
3 MR. PIERCE: You can't cut me off.
4 MR. CHUBAK: You can object to
5 questions, but speaking objections aren't
6 permitted.
7 MR. PIERCE: I'm not objecting.
8 MR. CHUBAK: Okay.
9 MR. PIERCE: I'm saying that what
10 you've been -- you've been treating the
11 witness in a way which I think falls
12 outside the bounds of propriety. If you
13 could be polite and respectful to him, I
14 would appreciate it. And also, if you
15 could start asking some questions about
16 actual facts, rather than reviewing the
17 testimony you've already obtained and
18 asking him to admit that somehow that just
19 proves what's in his report. It doesn't.
20 You can keep doing that, if you want to,
21 but it's not very productive.
22 MR. CHUBAK: I'll continue
23 questioning my witness. Thank you.
24 BY MR. CHUBAK:
25 Q. How many nonbrokered bankruptcy

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1 P. Lupoff
2 claim trades have you been involved in over the
3 course of the past 25 years?
4 MR. PIERCE: Object to form.
5 A. Vast majority of the time that I was
6 at Whitman, and then a small portion of the
7 claims subsequently went at either hedge funds
8 or on the prop desk at Lehman.
9 Q. After you left Lehman, do you recall
10 having been involved in the purchase of
11 nonbrokered bankruptcy claims?
12 A. Yes.
13 Q. Can you tell me where and under what
14 circumstances.
15 MR. PIERCE: Object to form.
16 A. I think I mentioned that we bought a
17 Footstar claim from a vendor directly. I think
18 that was at EagleRock.
19 Q. Do you recall the --
20 MR. PIERCE: Are you done with your
21 answer, sir?
22 THE WITNESS: Yes.
23 BY MR. CHUBAK:
24 Q. Do you recall roughly the dollar
25 amount of nonbrokered bankruptcy claim trades

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1 P. Lupoff
2 that you purchased?
3 MR. PIERCE: Ever?
4 BY MR. CHUBAK:
5 Q. While at MJ Whitman or Lehman?
6 MR. PIERCE: Object to form.
7 You can answer.
8 A. The dollar amount other than if
9 those two firms, that were non- --
10 Q. Yeah, other than at those two firms.
11 A. I don't remember those numbers
12 specifically, no.
13 Q. Do you remember roughly the dollar
14 amount while at MJ Whitman?
15 MR. PIERCE: Object to form. Dollar
16 amount of what?
17 MR. CHUBAK: Of nonbrokered
18 bankruptcy claim trades with which
19 Mr. Lupoff was involved in the purchase of.
20 MR. PIERCE: Thank you for the
21 clarification.
22 Object to form.
23 You can answer.
24 A. I can come up 300 million-plus
25 easily just in a handful of trades without

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1 P. Lupoff
2 thinking more than that. But I've not really
3 thought of it in that context before.
4 Q. When dealing with bankruptcy claims,
5 did you distinguish between trade claims --
6 what does the word "trade claim" mean to you?
7 A. Trade claim is the obligation of a
8 bankrupt debtor to a vendor or service provider
9 for an unpaid bill. It's usually evidenced by
10 an invoice or a bill of lading.
11 Q. Do you recall the approximate dollar
12 amount of trade claims -- trade claim purchases
13 that you were involved in at MJ Whitman,
14 nonbrokered?
15 MR. PIERCE: Object to form. I
16 think also asked and answered.
17 But go ahead.
18 A. Like I said, I can think of a
19 handful, maybe four or five, a number that get
20 us in excess of 300 million, much less the
21 thousands more we did.
22 But, no, I can't come up with a
23 number offhand.
24 Q. Can you identify those three or
25 four? Who -- can you identify those three or

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1 P. Lupoff
2 four?
3 A. We did in excess of 150 million with
4 Heller in one Kmart transaction alone.
5 In the Phar-Mor bankruptcy, where
6 the creditors were drug companies, the claims
7 tended to be between 25 and 75 million. We did
8 four or five of those at least.
9 As I think it through anecdotally, I
10 can put those together, as I've done in the
11 past, in preparation for these kinds of
12 conversations. But without referring to notes,
13 I can't remember off the top of my head more
14 than that for the time being.
15 You know, we got to be -- well, one
16 other thing --
17 MR. PIERCE: There's no question
18 pending.
19 THE WITNESS: I'm sorry. I'm still
20 answering his particular question.
21 A. In the C. Eaton bankruptcy, if you
22 were to look at the dollar amount of the
23 general and secured, we were more than a third
24 of the class, whatever that would have been.
25 And I couldn't tell you what that is

1 P. Lupoff
2 in number. But there would be a couple of
3 cases where the totals would have been -- our
4 objective was to get to a control part of the
5 general and secured class. So another way to
6 back into it would be to look at the general
7 and secured class in a case and then calculate
8 at least a third, and that would be my estimate
9 on some of them.

10 Q. In the second-to-last paragraph of
11 the first page, you mentioned that FINRA has
12 stated that orders for securities transactions
13 are contracts, and that most security orders
14 are verbal.

15 Is FINRA involved -- is FINRA
16 responsible for regulating the bankruptcy trade
17 claim business?

18 A. No.

19 Q. What does FINRA have anything to do
20 with bankruptcy trade claims generally?

21 MR. PIERCE: Object to form.

22 A. I believe that it sets up an
23 understanding amongst laymen that have any
24 familiarity with shares trading, stock trading,
25 of the actionability of oral commitments.

1 P. Lupoff
2 And so, my point is that
3 decision-makers amongst trade creditors are, to
4 a degree, very well informed and understand
5 what their oral commitment means, especially
6 with dealing a financial party on the other
7 side.

8 Q. Is the bankruptcy trade claim market
9 regulated?

10 A. You mean --

11 MR. PIERCE: Object to form.

12 A. -- by a regulatory entity?

13 Q. Sure.

14 A. No.

15 Q. Is bankruptcy claim trades
16 securities -- I'm sorry. Withdrawn.

17 Are bankruptcy claims securities?

18 A. I'm not a lawyer to parse words over
19 whether it's a security or not. But to my
20 knowledge, it isn't.

21 But we in the business, we in the
22 industry will think about financial obligations
23 that arise that in often instances would pursue
24 similar claims that are securities as trading
25 like them.

1 P. Lupoff
2 Q. I'm going to refer you to
3 paragraph 3.

4 A. Page 1?

5 Q. Of page 2.

6 A. Okay.

7 Q. What is GAIM, G-A-I-M?

8 A. Global Alternative Investment
9 Management. It's an, entity, a European
10 entity.

11 Q. Which fund was awarded top emerging
12 distressed manager?

13 A. Schultze.

14 Q. Remind me again, did you trade
15 bankruptcy claims while at Schultze?

16 A. Yes.

17 Q. Is this the fund where there were
18 under five bankruptcy trade claims handled by
19 you?

20 MR. PIERCE: Object to form.
21 You can answer.

22 A. Plus or minus 5. 5 to 10, maybe. I
23 don't recall.

24 Q. What is MARHedge?

25 A. I don't recall what MAR stands for,

1 P. Lupoff
2 but it's another hedge fund industry firm that
3 does conferences and gives out awards. It's
4 San Francisco-based, I believe.

5 Q. When were you awarded MARHedge's
6 event-driven manager award?

7 A. That was at EagleRock.

8 Q. And when were you awarded
9 institutional investor?

10 A. We just nominated -- that was at
11 Robeco.

12 Q. In paragraph 4, you state that
13 you're a regular featured discussant on
14 academic papers.

15 When have you been featured as a
16 discussant on academic papers regarding market
17 stocks and liquidity?

18 A. With -- just broadly or...

19 Q. Broadly.

20 A. Most recently, as part of a workshop
21 up at Yale School of Management last semester.
22 I'm sorry. Talking semester terms, that would
23 be, like, February or March of last year.

24 December at Yale School of
25 Management. A number of times with the Fed at

1 P. Lupoff
2 regular, year-end meetings that they did. I
3 probably haven't done one of their regular
4 meetings since 2010.
5 And then informally with the Fed
6 since then. When I say "informally," not as
7 part of any organized discussion. More in a
8 conference room behind closed doors.
9 Q. Have you written any white papers on
10 bankruptcy-related matters?
11 A. The closest one I think may be one I
12 did on the shock to oil price back at the 4th
13 quarter of 2014 and its impact on high-yield
14 issuers and the energy patch prospect for
15 bankruptcies, to the best of my recollection.
16 Q. I'm going to refer you to
17 paragraph 7, where you state that you
18 participated, in your estimate, well over
19 10,000 trade claims, totalling multiple
20 billions of dollars in value.
21 Was that experience principally at
22 MJ Whitman?
23 MR. PIERCE: Object to form.
24 Asked and answered.
25 You can go ahead.

1 P. Lupoff
2 A. No, that was surely a time where I
3 was very actively in markets because I ran a
4 desk that was actively involved in markets.
5 It was at the outset of that
6 business becoming more material. But it's hard
7 to say, because some of the later trades that I
8 have been involved in, where they were either
9 pooled or participations in SIVs, might have
10 been larger in terms of the number of claims.
11 There's a difference between, say, the number
12 of claim and the dollar, notional amount
13 traded.
14 MR. PIERCE: Jeff, I apologize, but
15 I've got to take a break at this point.
16 Let us go off the record.
17 (Recess is taken.)
18 BY MR. CHUBAK:
19 Q. I'm going to refer you to the
20 portion of your portfolio that begins with
21 paragraph 13.
22 A. Yes.
23 Q. Do you believe that when agreement
24 is priced -- withdrawn.
25 Is it your testimony that when an

1 P. Lupoff
2 agreement on price is reached with a trade
3 creditor, that the enforceable bankruptcy trade
4 claim agreement exists?
5 MR. PIERCE: Object to form.
6 You can answer.
7 A. Price and amount. On price and
8 amount, the buyer owns the claim risk
9 transfers.
10 Q. What is the basis for your belief
11 that that's the case?
12 A. From my experiences in the trade
13 claim business over the last 25 years or so,
14 the reasonable expectations of the parties and
15 the trades, that they are bound by their oral
16 agreements.
17 Q. Have you ever shared your beliefs
18 with others in the bankruptcy trade claim
19 business?
20 MR. PIERCE: Object to form.
21 A. Yes.
22 Q. Can you tell me who you've discussed
23 your beliefs with in the bankruptcy trade claim
24 business.
25 A. Lawyers. Other traders of claims.

1 P. Lupoff
2 Buy side clients. Trade creditors. Vendors.
3 Q. Can you tell me what other
4 bankruptcy claim trade purchasers you've
5 discussed that with.
6 MR. PIERCE: Objection to form.
7 You're asking him to give you individual
8 names?
9 MR. CHUBAK: Yeah.
10 MR. PIERCE: Okay.
11 A. I can't with any specificity.
12 Q. Do you go to any bankruptcy claim
13 trade events?
14 MR. PIERCE: Object to form.
15 A. I don't think I've ever seen a
16 bankruptcy claim trade event.
17 Q. Are you member of the American
18 Bankruptcy Institute?
19 A. No.
20 Q. Are you a member of the Turnaround
21 Management Association?
22 A. No.
23 Q. Are you a member of any
24 bankruptcy-related organizations?
25 A. No.

1 P. Lupoff
2 Q. Have you ever been a member of the
3 American Bankruptcy Institute, Turnaround
4 Management Association, or similar
5 organization?
6 A. Perhaps my institutions have. I
7 don't recall. But I would say the greatest
8 volume of conversations in public forums about
9 this topic, if that's what you're driving at,
10 are at industry conferences around stressed
11 investing. And that, I have done quite a bit.
12 MR. CHUBAK: Can you read that back.
13 (Answer was read back as follows:
14 "ANSWER: Perhaps my institutions
15 have. I don't recall. But I would say
16 the greatest volume of conversations in
17 public forums about this topic, if that's
18 what you're driving at, are at industry
19 conferences around stressed investing.
20 And that, I have done quite a bit.")
21 BY MR. CHUBAK:
22 Q. When you refer to distressed
23 investing, are you referring to syndicated loan
24 trading?
25 MR. PIERCE: Object to form.

1 P. Lupoff
2 A. No.
3 Q. What are you referring to?
4 A. All obligations that can trade the
5 bankrupt debtor, which would include bank
6 loans, trade claims, bonds, equity, anything in
7 a bankrupt debtor's capitalization.
8 Q. Are you in touch with people who buy
9 trade claims, bankruptcy claims professionally?
10 A. Yes.
11 MR. PIERCE: Object to form.
12 BY MR. CHUBAK:
13 Q. Can you identify those persons.
14 MR. PIERCE: Object to form.
15 You can answer.
16 A. How broad a list do you want?
17 Q. Can you tell me the name of people
18 that run funds specifically oriented towards
19 buying bankruptcy claims, that you interact
20 with.
21 MR. PIERCE: Object to form. You've
22 got to pause, let me object.
23 You can answer the question, if you
24 understand it.
25 A. Just bankruptcy claims? When you

1 P. Lupoff
2 say "bankruptcy claim," are you including the
3 whole capitalization of companies, or just
4 trade claims? A distressed investment entity?
5 Q. Persons who manage funds that focus
6 principally on buying bankruptcy claims.
7 A. First of all, there are not that
8 many that focus principally on buying trade
9 claims. But specifically within the last two
10 weeks, I've talked to two.
11 Q. Can you tell me who those persons
12 are.
13 A. Rob Koltai at Hain Capital. That's
14 K-O-L-T-A-I. And Vladimir Jelisavcic. And I
15 will botch his name terribly. It begins with a
16 J. His firm is Bowery Capital.
17 MR. PIERCE: Spell that.
18 A. B-O-W-E-R-Y.
19 Q. Have you spoken with Vlad about your
20 belief that an enforceable agreement exists
21 upon reaching an agreement with respect to
22 price?
23 MR. PIERCE: Object to form.
24 You can answer.
25 A. Possibly. Probably in the last

1 P. Lupoff
2 25 years. Not within the last week.
3 Q. Do you recall having had any
4 discussion with Vlad?
5 A. At all?
6 MR. PIERCE: In the 25 years?
7 BY MR. CHUBAK:
8 Q. About the subject matter that I'm
9 asking about, specifically whether an
10 enforceable agreement --
11 A. I don't recall.
12 MR. PIERCE: You've got to pause.
13 You have to pause, okay?
14 THE WITNESS: I'm sorry.
15 MR. PIERCE: Object to form.
16 A. I don't recall offhand.
17 Q. Is it fair to say that your belief
18 that an enforceable agreement exists upon
19 reaching agreement with a bankrupt -- with a
20 creditor on price of their bankruptcy claim --
21 withdrawn.
22 Is your belief that an enforceable
23 agreement exists upon reaching agreement with
24 respect to price and amount of a bankruptcy
25 claim trade based on your -- based on your --

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<p>1 P. Lupoff 2 based solely on your experience? 3 A. Can you repeat that. 4 MR. PIERCE: Object to form. I 5 don't think that was a sentence. 6 A. I didn't really understand. 7 Q. I'm going to refer you to 8 paragraph 18 of your report. 9 Can you tell me what form a written 10 confirmation would take following an oral 11 confirmation. 12 A. If an oral confirmation, in which 13 I've written this report, could be 14 face-to-face, by telephone, by e-mail, text. 15 And the written confirmation is a longer 16 writing, incorporates those terms, typically in 17 a one-page or two-page writing. 18 A written confirmation will 19 reiterate price and amount, and then will 20 expand on some additional terms that are 21 ministerial, that are required in order to 22 generate a purchase and sale agreement. 23 Q. Is a written confirmation signed by 24 the parties ordinarily? 25 MR. PIERCE: Object to form.</p>	<p>1 P. Lupoff 2 You can answer. 3 A. I've seen them and generated them 4 not requiring execution. I've seen them and 5 generated them requiring only my execution. 6 And then I've seen them and generated them with 7 two-party execution. And not in all trades 8 have written confirmations been created, in my 9 experiences. 10 Q. In your experience, what bankruptcy 11 claim trades that did not have a signed written 12 confirmation were considered enforceable? 13 MR. PIERCE: Object to form. He's 14 not a lawyer. You're asking a legal 15 question. 16 You can answer. 17 A. Well, I have thought, based on my 18 experiences and the people that I've done 19 business with, that my oral commitments, that 20 oral commitments are enforceable. If I 21 understand your question. 22 Q. Would you consider an oral 23 commitment enforceable if the written 24 confirmation states that it's subject to 25 written documentation?</p>
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<p>1 P. Lupoff 2 MR. PIERCE: Object to form. 3 You can answer. 4 A. Can you repeat that more time, 5 please. 6 (Question was read back as follows: 7 "QUESTION: Would you consider an 8 oral commitment enforceable if the written 9 confirmation states that it's subject to 10 written documentation?") 11 A. Okay. 12 MR. PIERCE: I'm sorry. Read it 13 again. 14 BY MR. CHUBAK: 15 Q. You know what, withdrawn. 16 MR. PIERCE: Yeah. 17 BY MR. CHUBAK: 18 Q. Are you aware of any lawsuit that 19 has been brought for breach of duty to 20 negotiate the bankruptcy claim trade agreement 21 in good faith after the parties reach agreement 22 on price? 23 A. Yes. 24 Q. Can you identify the lawsuits that 25 you're aware of.</p>	<p>1 P. Lupoff 2 A. I'm pretty sure that was the cause 3 of action verdict in the Fulcrum versus 4 Strategic failed trade, where I was an expert 5 back in 2011. 6 Q. Are you aware of any other cases? 7 A. Not really looking at case law, no. 8 I'm sorry. 9 MR. PIERCE: I assume you're 10 excluding Westinghouse? 11 MR. CHUBAK: I'm sorry? 12 MR. PIERCE: I assume you're 13 excluding Westinghouse. 14 MR. CHUBAK: He can answer it as he 15 wants. 16 MR. PIERCE: I'm just asking for 17 clarification. You've written about 18 Westinghouse in your summary judgment 19 motion. It's not a secret. 20 MR. CHUBAK: Sure. Frankly, I would 21 include Westinghouse within that category. 22 But it doesn't matter. 23 MR. PIERCE: Maybe I don't 24 understand the category. It's fine. 25 Go ahead.</p>

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1 P. Lupoff
2 BY MR. CHUBAK:
3 Q. I'm going to refer you to
4 paragraph 29, where you state: "In my career,
5 I only had two or three trades fail to close."
6 A. Yes.
7 Q. You mentioned one earlier. I
8 believe it was the rapper --
9 A. The Daz Dillinger, Death Row
10 Records.
11 Q. Can you identify the other two
12 claims that you're referring to.
13 A. Off the top of my head, I cannot. I
14 recall one in my Whitman -- in my time at
15 Whitman, where the claimant was small and we
16 chose not to pursue a cause of action. But I
17 don't recall the name of the party or the
18 claim.
19 Q. Did any of those result in lawsuits?
20 A. Not to my recollection, no.
21 Q. In the next paragraph, you state
22 that a buyer would typically list a known trade
23 on its books and portfolio from the date of an
24 oral confirmation?
25 A. Yes.

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1 P. Lupoff
2 an original trade creditor on the other side
3 that's failing to close. It's not always the
4 case.
5 But what does seem to be most often
6 the case, and I have a hard time coming up with
7 one that hasn't, it's almost always financially
8 motivated. The motive of the refusal to close
9 is because there's a change, whether it's a
10 buyer or seller, there's a change in the case
11 that has changed the value significantly.
12 Q. What players in the market have you
13 spoken with about this?
14 A. I'm not going to be able to identify
15 any other than in my course of dealing over the
16 years. I've been involved in this and spoken
17 at conferences. Met socially with people in
18 the business. It's been part of the dialogue
19 of people in our business, generally.
20 Q. Can you identify which people you've
21 spoken with about this.
22 A. Offhand, no.
23 Q. Can you tell me what conferences
24 you've spoken at about this.
25 A. About the particular issue of failed

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1 P. Lupoff
2 Q. Is that always the case?
3 A. I can't say I can speak for all
4 buyers of claims, but those that are operating
5 professionally and especially if they're
6 regulated entities. I think compliance would
7 take a dim view of making an oral commitment of
8 capital and not putting it on your books.
9 So I would say most well-run,
10 regulated financial institutions would, yes.
11 Q. In paragraph 31, you state (as
12 read): "In my opinion, the failure to settle
13 trade claims is nearly always a matter of bad
14 faith of the original trade claim holding
15 seller." And that "This is the financial buyer
16 community's prevailing point of view."
17 What is the basis for your statement
18 that "this is the financial buyer community's
19 prevailing point of view"?
20 MR. PIERCE: Object to form.
21 You can answer.
22 A. Discussions I've had with other
23 players in the market that are more actively
24 engaged over the years, that when trade claim
25 trades fail to close, it's almost always with

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1 P. Lupoff
2 trade claims? Or about distress investing
3 generally?
4 Q. About the particular issue of failed
5 trade claims.
6 A. I won't remember that, no.
7 Q. I'm going to refer you to
8 paragraph 33. Where --
9 MR. PIERCE: I'm sorry. 33?
10 MR. CHUBAK: 33.
11 BY MR. CHUBAK:
12 Q. Where you describe excuses offered
13 by bankruptcy -- by creditors in bankruptcy
14 cases for not consummating a bankruptcy claim
15 trade following agreement on price.
16 And specifically, the second-to-last
17 sentence, where you state (as read): "In all
18 of these circumstances, the seller had agreed
19 to sell and I had agreed to buy."
20 Can you identify failed bankruptcy
21 claim trades where you were told that the claim
22 trade failed because the potential seller might
23 get an extra penny of purchase price elsewhere?
24 MR. PIERCE: Object to form.
25 A. Well, I'm going to have a hard time

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1 P. Lupoff
2 identifying a specific, other than I think I
3 mentioned the small supplier to a discount
4 department store out west that told me
5 basically they were judgment-proof, and that
6 the claim was too small.
7 But it has been my experiences that
8 exclusively, any issue I ever had with
9 settlement had to do with price, regardless of
10 what might have been said about other reasons.
11 It was almost always that there was a higher
12 price or a lower price, depending upon which
13 way things were going.
14 I can't name any specific, no.
15 Q. Were you involved in any failed
16 bankruptcy claim trades where someone at the
17 potential seller's company second-guessed the
18 decision to sell, and that resulted in the
19 trade's failure?
20 MR. PIERCE: Object to form.
21 Go ahead.
22 A. I'll say broadly, with these kinds
23 of expressions, they're all utterances, as best
24 I can recall them, close to verbatim, said to
25 me, and in many instances, as the buyer of the

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1 P. Lupoff
2 claim, you do what's commercially reasonable at
3 the time.
4 And so, in some instances, what may
5 be commercially reasonable at the time is to
6 say to the seller, "Is this about price?"
7 If it's about price, "Tell me the
8 price I need to pay for you to live up to your
9 obligation."
10 And then in some instances, they'll
11 say, "Okay. You committed 40. You pay me 45,
12 and we're done."
13 Q. Can you identify any specific trades
14 in which that happened.
15 A. No.
16 Q. What about with respect to the
17 following sentence: "Hearing an explanation
18 that they hadn't done sufficient due diligence
19 on market value?"
20 A. I'm not going to be able to identify
21 a specific party that's uttered any one of
22 these things so much as these are the kinds of
23 comments I've heard over the years, broadly.
24 Q. When you say you've heard these
25 comments over the years, are you referring to

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1 P. Lupoff
2 your experience at MJ Whitman?
3 MR. PIERCE: Object to form.
4 A. Not necessarily. Because in some
5 instances, they come back to me through the
6 broker-dealer, explaining why a trade is taking
7 time or what's happening, and closing what we
8 might have been working on.
9 Q. Can you recall when you heard --
10 withdrawn.
11 Have you heard -- what do you --
12 have any trade creditors given you -- I
13 apologize. Withdrawn.
14 MR. PIERCE: Jeff, how close are you
15 to the end? Do you want to take a few
16 minutes to see if there are any additional
17 questions you want to ask?
18 MR. CHUBAK: Let's take a couple of
19 minutes. I don't think it's going to take
20 more than that.
21 (Recess is taken.)
22 BY MR. CHUBAK:
23 Q. You testified earlier that you
24 didn't recall the name of the purchasing entity
25 on the bankruptcy claim trades with which you

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1 P. Lupoff
2 were involved at several prior employers; is
3 that correct?
4 A. Yes.
5 MR. PIERCE: Object to form.
6 THE WITNESS: I'm sorry.
7 BY MR. CHUBAK:
8 Q. Given that, I'm going to demand that
9 you actually produce the transfers of claim for
10 the bankruptcy claims with which you were
11 involved.
12 Can you do that for me?
13 A. Is that for me to answer?
14 Q. Yes.
15 A. I can notify all of my prior firms.
16 Other than Tiburon, I can't compel people to
17 give me things, but I can request them.
18 Q. You were commanded to produce these
19 things today. And you're testifying based on
20 your experience in the bankruptcy trade claim
21 business; is that correct?
22 A. Yes.
23 Q. And you haven't brought these things
24 today?
25 A. I have not.

1 P. Lupoff
2 MR. PIERCE: Object to form.
3 BY MR. CHUBAK:
4 Q. Respectfully, how can you testify
5 based on your experience if you don't even know
6 the name of the entity purchasing the
7 bankruptcy claim on the Rule 3001 transfer?
8 MR. PIERCE: Object to form.
9 A. There's a vast difference between
10 operational and administrative knowledge and
11 market knowledge. The filing of 3001(e) is a
12 ministerial and operational back office
13 function in the firms where I worked. To
14 understand, to know that process is not the
15 same thing as understanding value of claims and
16 how claims trade.
17 And what are the practices in the
18 industry? The practices in the industry, only
19 very tangentially matter regarding the
20 ministerial aspects of transfer. The
21 ministerial aspect of filing a 3001(e) is a
22 very minor, after-the-fact process that isn't
23 something that people expert in the industry
24 are necessarily involved in.
25 And those that are expert at and

1 P. Lupoff
2 involved in that may know nothing about trade
3 claims.
4 Q. Didn't you testify earlier that you
5 were involved in the negotiation of trade
6 documentation?
7 A. Yes.
8 Q. Doesn't the trade documentation list
9 the name of the purchasing entity?
10 A. Yes.
11 Q. But you don't recall the name of the
12 purchasing entity at MJ Whitman or Lehman?
13 MR. PIERCE: Object to form.
14 A. I can hypothesize what they are
15 likely. At MJ Whitman, it was MJ Whitman or MJ
16 Whitman Senior Debt Corp., or Whitman Loan
17 Corp., or in and around the variation on the
18 theme.
19 But what I remember are the
20 transactions. The ministerial aspects of how
21 paperwork -- to my thinking, it's almost like
22 confirms on securities. What's printed on it
23 is less relevant than the risk transfers that's
24 valued properly, and that as an investor in
25 trade claims has a product that you're getting

1 P. Lupoff
2 at the end of the case the value that you
3 thought you did in cash and securities.
4 The ministerial aspects of it you
5 can be involved in, understand the minutiae of
6 what a five-day notice period is versus a ten.
7 Understand how true-ups work. Sign the
8 document at the bottom.
9 But what the buying entity is, is
10 not particular relevant to somebody that's
11 managing the risk, as long as that risk is
12 associated with the vehicle that they run.
13 MR. CHUBAK: I'm done.
14 (Recess is taken.)
15 EXAMINATION BY
16 MR. PIERCE:
17 Q. This is Clay Pierce from Drinker
18 Biddle & Reath on behalf of the witness, and
19 also on behalf of White Box.
20 Mr. Lupoff, you were shown earlier
21 today a copy of what's been marked as
22 Exhibit 1.
23 Do you have it in front of you?
24 A. I do.
25 Q. Exhibit 1 is the subpoena, correct?

1 P. Lupoff
2 A. Yes.
3 Q. And the subpoena lists a schedule on
4 the last page of items which Earl of Sandwich
5 asked you to produce today.
6 Do you see that?
7 A. I do.
8 Q. The very first paragraph on Schedule
9 1 references purchase and sale agreements for
10 the last 20 bankruptcy claims Peter Lupoff has
11 been involved in.
12 Do you see that?
13 A. Yes.
14 Q. Do you have any purchase and sale
15 agreements for bankruptcy claim trades you were
16 involved in in your files?
17 A. No.
18 Q. What about Rule 3001(e) statements,
19 do you have any of those?
20 A. No.
21 Q. What about documents entitled
22 "Transfer of Claim" other than for security or
23 "Notice of Transfer of Claim" other than for
24 security forms, do you have any of those?
25 A. No.

<p style="text-align: right;">Page 102</p> <p>1 P. Lupoff</p> <p>2 Q. Who has all of those documents?</p> <p>3 A. Each of my prior funds where I was</p> <p>4 employed. I would imagine they have it in</p> <p>5 their records.</p> <p>6 Q. Do you have any understanding as to</p> <p>7 whether or not those funds are obligated to</p> <p>8 produce these documents to you, if you were to</p> <p>9 ask for them?</p> <p>10 A. I don't.</p> <p>11 Q. Okay. Are all of these documents --</p> <p>12 strike that.</p> <p>13 Is it your understanding that</p> <p>14 Rule 3001(e) statements are filed</p> <p>15 electronically in bankruptcies where they're</p> <p>16 submitted?</p> <p>17 A. To the best of my knowledge, yes.</p> <p>18 (Continued on the following page to</p> <p>19 include jurat.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 103</p> <p>1 P. Lupoff</p> <p>2 Q. Okay. And those electronic filings</p> <p>3 are publically available?</p> <p>4 A. Yes.</p> <p>5 MR. PIERCE: No further questions.</p> <p>6 MR. CHUBAK: Nothing further.</p> <p>7 (Time Noted: 1:12 p.m.)</p> <p>8</p> <p>9</p> <p>10 -----</p> <p>11 PETER LUPOFF</p> <p>12</p> <p>13 Subscribed and sworn to before me</p> <p>14 this day of 2018.</p> <p>15</p> <p>16 -----</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																		
<p style="text-align: right;">Page 104</p> <p>1</p> <p>2 CERTIFICATE</p> <p>3</p> <p>4 STATE OF NEW YORK)</p> <p>5) ss.:</p> <p>6 COUNTY OF NEW YORK)</p> <p>7</p> <p>8 I, LISA M. MURACO, a Notary Public</p> <p>9 within and for the State of New York, do</p> <p>10 hereby certify:</p> <p>11 That PETER LUPOFF, the witness whose</p> <p>12 deposition is hereinbefore set forth, was</p> <p>13 duly sworn by me and that such deposition</p> <p>14 is a true record of the testimony given by</p> <p>15 such witness.</p> <p>16 I further certify that I am not</p> <p>17 related to any of the parties to this</p> <p>18 action by blood or marriage; and that I am</p> <p>19 in no way interested in the outcome of this</p> <p>20 matter.</p> <p>21 IN WITNESS WHEREOF, I have hereunto</p> <p>22 set my hand this 24th day of August, 2018.</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">_____ LISA M. MURACO</p>	<p style="text-align: right;">Page 105</p> <p>1</p> <p>2 INDEX</p> <p>3</p> <table><thead><tr><th>WITNESS</th><th>PAGE</th></tr></thead><tbody><tr><td>PETER LUPOFF</td><td></td></tr><tr><td>MR. CHUBAK</td><td>4</td></tr><tr><td>MR. PIERCE</td><td>100</td></tr></tbody></table> <p>9</p> <p>10 EXHIBITS</p> <table><thead><tr><th>DESCRIPTION</th><th>PAGE</th></tr></thead><tbody><tr><td>Lupoff Exhibit 1, subpoena</td><td>5</td></tr><tr><td>Lupoff Exhibit 2, Summary and Opinion of Peter M. Lupoff</td><td>18</td></tr></tbody></table> <p>17</p> <p>18</p> <p>19 INFORMATION REQUESTED</p> <table><thead><tr><th>Page</th><th>Line</th></tr></thead><tbody><tr><td>Report</td><td>5 8</td></tr></tbody></table> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	WITNESS	PAGE	PETER LUPOFF		MR. CHUBAK	4	MR. PIERCE	100	DESCRIPTION	PAGE	Lupoff Exhibit 1, subpoena	5	Lupoff Exhibit 2, Summary and Opinion of Peter M. Lupoff	18	Page	Line	Report	5 8
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